

UNITED STATES DISTRICT COURT

MIDDLE

DISTRICT OF

ALABAMA

UNITED STATES OF AMERICA

V

MICHAEL D HARVEY

GOVERNMENT'S EXHIBIT LIST

Case Number: 1:06CR107-MHT-CSC

0035-06-01083-62421

DATE 6 MAR 06

Parental Consent for Interview/Fingerprints/Videotape/Photograph of Juvenile

File Number _____

JUVENILE STATEMENT OF CONSENT

I, Johnny Power, being the legal guardian / parent of Michael D. Harvey,
(name of parent / guardian) (name of interviewee)do hereby permit said person to submit to an interview, fingerprints, videotape, photograph,
pertaining to Indecent assault on a child under the age of 16.Michael D. Harvey
(Signature of Juvenile)Johnny Power
(Signature of Parent / Legal Guardian)64 Hwy 590W
Seminole, Ms. 39479
601-270-0936
(Address / Telephone Number)64 Hwy 590W
Seminole Ms. 39479
P.O. Box 47
601-329-9453
(Address / Telephone Number)

Witness:

Ryan D. Bernstein
(Signature)Ryan D. Bernstein
(Typed Name of Witness)FOR OFFICIAL USE ONLY
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Exhibit _____

GOVERNMENT
EXHIBIT

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <i>Covington Co</i>		2. DATE <i>09 MAR 06</i>	3. TIME <i>14:30</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>Harvey, Michael David</i>		8. ORGANIZATION OR ADDRESS		
6. SSN <i>428-61-4357</i>	7. GRADE/STATUS <i>CIV</i>	64 Hwy 590 W. Seminary, MS 39475		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation.
Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: Indecent assault on a child under the age of 16/11 DH

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.

2. Anything I say or do can be used as evidence against me in a criminal trial.

3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

4. (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side) I am willing to waive my rights and make a statement. D

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me. DR

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)	Johnny Powers	
b. ORGANIZATION OR ADDRESS AND PHONE	601-324-9453	
2a. NAME (Type or Print)	Michael D Harvey	
b. ORGANIZATION OR ADDRESS AND PHONE	604 590 W. Seminary, MS 39479	
		4. SIGNATURE OF INVESTIGATOR
		Tom P. Bostain
		5. TYPED NAME OF INVESTIGATOR
		Ryan D. Bostain
		6. ORGANIZATION OF INVESTIGATOR
		Fort Rucker Resident Agency

Section C. Non-waiver

1. I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything

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ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED.

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

USAPPC V1.00



PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. **WARNING** - Inform the suspect/accused of:
 - a. Your official position.
 - b. Nature of offense(s).
 - c. The fact that he/she is a suspect/accused.
2. **RIGHTS** - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

 - a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, or in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisement.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer"), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

13070-0000-90-9800

SWORN STATEMENT

0035-06-Sub3-62421

File Number :
 Location : Covington County Sheriff's Department
 Date : 6 Mar 06 DH
 Time : 14:00 DH
 Statement of : Michael D. HARVEY
 Grade/Status : CIV
 SSN : 428-61-4357
 Org/Address : 64 590 Highway West, Seminary MS

DH I Michael D. HARVEY, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

About 2400, 31 Oct 05, it was late on Halloween, I arrived at my sister Sharla Annette MOORE's house at Ft. Rucker, Al. We walked in and I stayed in the living room for a little while, then I had to go use the restroom. I sat down on the toilet and my brother-in-law had some Playboys in the bathroom and I started masturbating to them. Then [REDACTED] came into the bathroom and I told him to come here and I grabbed his arm and I made him put his hand on my penis and squeeze and start rubbing my penis for about two or three minutes. After that he left the bathroom and he closed the door and I continued to masturbate until I came. After that I got dressed and went out to the living room and sat down. That was the only time [REDACTED] touched me. About 1300, 22 Nov 05, I was walking down the hall and I could hear [REDACTED] and Will acting up, and they should have been napping. I opened the door and walked in, sat down on [REDACTED] bed next to [REDACTED] who was sitting up on the edge. I put my hand on [REDACTED] leg, I squeezed his leg, and I slid my hand down his pants onto his penis. I started to squeeze and rub his penis and I was doing that for about five minutes and I took my hand out from under his pants. I got up and when I was walking out I told him to go to bed. I shut the door and went into his mom's room and told her that the kids were acting up. I then went into the living room and sat down. I watched T.v.

About 1300, 23 Nov 05, I went into [REDACTED] room and [REDACTED] was playing with his toys. I picked [REDACTED] up and set him down on his bed and I slid my hand down his pants and I started squeezing and rubbing his penis for about two or three minutes then I slid my hand down his pants and started squeezing his butt for about five seconds. After that I slid my hands out of his pants and I got up and left the room.

About 1530, 23 Nov 05, me and [REDACTED] were in the living room sitting on the couch and I slid my hand down his pants and started squeezing and rubbing his penis again for about five minutes, then I stopped doing that and I put my hand on his butt, I started squeezing that for about three seconds, I then slid my hand out of his pants and stopped touching him.

We ate dinner around 1800 or 1900, 23 Nov 05, after dinner I sat down in the living room on the couch. I sat in there for at least an hour or so. Then [REDACTED] was still in his room and I got up and was walking down the hall and [REDACTED] had

EXHIBIT _____ INITIALS OF PERSON MAKING STATEMENT DH PAGE 1 OF 6 PAGES

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STATEMENT OF: **Michael D. HARVEY** ; TAKEN AT: Covington County Sheriff's Department, Collins, MS; DATED: March 6, 2006 CONTINUED:

his door open, I don't remember what he was doing, I think he was sitting on his bed, I don't remember, but I sat down next to him and slid my hand down his pants, I started squeezing and rubbing his penis, I don't remember how long it was, it was probably for a couple of minutes, then I got my hand out of his pants and then I slid down the back of his pants and started squeezing his butt for at least five seconds and after I pulled my hand out of his pants, I think it was just about bed time, my sister came in to the bedroom and I got up and I was telling [REDACTED] good night. Will came in and I hugged him and told him good night. Then I was walking down the hall and sat down on the couch and watched T.V.

Q: SA Ryan D. BOSTAIN.

DA A: Michael D. HARVEY.

Q: Did you at any time during any of these incidents attempt to penetrate [REDACTED] anus with any part of your body?

A: No.

Q: What was [REDACTED] wearing during these four incidents?

A: Every time I slid my hand down his pants, he was wearing jeans.

Q: When you say the words "Came or Cum" are you referring to the male orgasm?

A: I'm referring to when my sperm comes out of my penis.

Q: During the first incident on 31 Oct 06, did you touch [REDACTED] penis or his anus?

A: No.

Q: During the first incident, which hand of [REDACTED]'s did you place on your penis?

A: I used my right hand to grab his right hand and placed it on my penis.

Q: Why did you place [REDACTED] hand on your penis?

A: Because it felt good to have his hand on my penis.

Q: Do you understand what sexually aroused means?

A: Yes.

Q: Did you become sexually aroused when you placed [REDACTED] hand on your penis?

A: Yes.

Q: Did you understand what the word ejaculate means?

A: Yes.

Q: Did you use [REDACTED] hand on your penis to cause you to ejaculate?

A: No, because after I pulled his hand away I finished masturbating myself.

Q: Did you use your hand to make [REDACTED] squeeze and rub your penis?

A: Yes.

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INITIALS OF PERSON MAKING STATEMENT DR

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STATEMENT OF: **Michael D. HARVEY** ; TAKEN AT: Covington County Sheriff's Department, Collins, MS; DATED: March 6, 2006 CONTINUED:

Q: Did you tell [REDACTED] to rub your penis, or did you always have your hand on top of his?

A: I always had my hand on top of his.

Q: During the second incident on 22 Nov 05, did you unbutton or unzip [REDACTED] pants?

A: No, his pants were loose enough to slide my hand in them without unzipping or unbuttoning them.

Q: During any of the incidents did you unzip or unbutton [REDACTED] pants?

A: No.

Q: During the second incident which hand did you slide down [REDACTED] pants?

A: He was sitting on my right and I slid my right hand down his pants.

Q: During the second incident did you squeeze and rub [REDACTED] penis through his underwear or were you touching his penis directly?

A: I was touching the skin directly.

Q: During the second incident, did anyone see you put your hand down [REDACTED] pants and rub his penis?

A: No, Will was in the room, but he didn't see anything.

Q: During the second incident what was [REDACTED] doing when you were rubbing his penis?

A: We were talking about the playground we were going to play at the next day, but not about me rubbing his penis.

Q: During any of the incidents did [REDACTED] penis become erect while you were rubbing his penis?

A: No.

Q: During the second incident why were you rubbing and squeezing [REDACTED] penis?

A: Because it felt good.

Q: During the second incident, did you become sexually aroused while you were rubbing and squeezing [REDACTED] penis?

A: Yes.

Q: During the third incident which hand did you use to rub [REDACTED] penis with?

A: I used my right hand.

Q: During the third incident did you rub [REDACTED] penis directly or on top of his underwear?

A: Directly.

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STATEMENT OF: **Michael D. HARVEY** ; TAKEN AT: Covington County Sheriff's Department, Collins, MS; DATED: March 6, 2006 CONTINUED:

Q: During the third incident, did anyone see you rubbing or squeezing [REDACTED] penis?

A: No, no one else was in the room.

Q: During the third incident, why did you rub and squeeze [REDACTED] penis?

A: Because it felt good.

Q: During the third incident, did you become sexually aroused while rubbing and squeezing [REDACTED] penis?

A: Yes.

Q: During the fourth incident, which hand did you use to rub [REDACTED] penis?

A: The same hand, my right.

Q: During the fourth incident, did you rub and squeeze [REDACTED] penis through his underwear or did you touch his penis directly?

A: Directly.

Q: During the fourth incident, did you become sexually aroused while rubbing and squeezing [REDACTED] penis.

A: Yes.

Q: During the fourth incident did anyone see you rub or squeeze [REDACTED] penis?

A: No.

Q: Do you understand what sexual gratification means?

A: Yes.

Q: Were your actions in these four incidents for your own sexual gratification?

A: Yes.

Q: Other than the first incident did you ever touch [REDACTED] with your penis?

A: No.

Q: Did you ever place [REDACTED] penis in your mouth?

A: No.

Q: Did you ever place your penis in [REDACTED] mouth?

A: No.

Q: Did you ever rub or squeeze [REDACTED] penis?

A: No.

Q: Did you ever touch [REDACTED] for your own sexual gratification?

A: No, I've never done anything with him at all.

Q: Did you tell [REDACTED] not to tell anyone about any of these incidents?

A: Yes.

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INITIALS OF PERSON MAKING STATEMENT JDH

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STATEMENT OF: Michael D. HARVEY ; TAKEN AT: Covington County Sheriff's Department, Collins, MS; DATED: March 6, 2006 CONTINUED:

Q: What did you tell [REDACTED]?

A: I told him not to tell his mother about the incidents.

Q: How long did you think about rubbing and squeezing [REDACTED] penis before you did it?

A: I had been about rubbing and squeezing [REDACTED] penis for about three years.

Q: How often in those three years did you think about rubbing and squeezing [REDACTED] penis?

A: Every few months I would think about it.

Q: Has there been any other incidents where you have rubbed or squeezed [REDACTED] penis, or where you have made [REDACTED] rub and squeeze your penis?

A: No.

Q: Have you told anybody about rubbing and squeezing [REDACTED] penis?

A: No.

Q: After three years of thinking about touching [REDACTED] penis, why did you finally do it?

A: He's been away for about three years, that was the first time I had seen him in three years.

Q: Did you ever masturbate yourself while you were rubbing and squeezing [REDACTED] penis?

A: No.

Q: Were you offered opportunity to take breaks, use the bathroom and get something to drink during this interview?

A: Yes.

Q: How were you treated during this interview?

A: Good.

Q: Do you have anything else you wish to add to this statement?

A: I want to say that I am sorry for what I have done.

Q: Is there anything else you wish to add to this statement?

DH A: No. // End of Statement // DH

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

DH

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STATEMENT OF: **Michael D. HARVEY** ; TAKEN AT: Covington County Sheriff's Department, Collins, MS; DATED: March 6, 2006 CONTINUED:

AFFIDAVIT

I, **Michael D. HARVEY** HAVE READ CR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 6. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Michael D. Harvey
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oath, this 6 th day of March , 2006, at Covington County Sheriff's Department.

John D. Bostain
(Signature of Person Administering Oath)

SPECIAL AGENT RYAN D. BOSTAIN, 6117
Fort Rucker Resident Agency (CID), Fort Rucker, AL 36362

(Typed Name of Person Administering Oath)

ARTICLE 136 UCMJ

(Authority to Administer Oath)

WITNESSE:

Michael D. Harvey *Chris Newman*
Covington County Sheriff's Dept
Collins, MS

EXHIBIT INITIALS OF PERSON MAKING STATEMENT DH PAGE 6 OF 6 PAGES

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